

Melissa Stevens

Page 1

# ORIGINAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SHAW FAMILY ARCHIVES, LTD., EDITH  
MARCUS and META STEVENS,

Plaintiffs,

vs. 05 Civ. 3939 (CM)

CMG WORLDWIDE, INC., an Indiana  
Corporation, and MARILYN MONROE, LLC,  
a Delaware Limited Liability Company,

Defendants.

DEPOSITION OF MELISSA STEVENS

New York, New York

Monday, December 17, 2007

Reported by:

Adrienne M. Mignano

JOB NO. 199551

1 Stevens

2 Q. Would it be accurate to  
3 characterize SFA as a family business?

4 A. Yes.

5 Q. And you're part of the family?

6 A. That's correct.

7 Q. So you have an interest in the  
8 business?

9 A. Absolutely.

10 Q. Prior to two weeks ago, where were  
11 you employed?

12 A. Could you specify the question?

13 Q. Sure.

14 You said you started officially  
15 two weeks ago as an employee of SFA, and  
16 I'm asking where you were employed before  
17 two weeks ago?

18 A. My most recent job prior to being  
19 hired as the operations manager was with  
20 the Sopranos television show.

21 Q. In what capacity?

22 A. I was a locations coordinator.

23 Q. And were you employed by the  
24 Sopranos for -- that sounds bad.

25 Were you employed by the

1 Stevens

2 forming SFA. You indicated that you know  
3 who they are, and I'm asking, who they  
4 are?

5 A. Well, I know who the owners of SFA  
6 are, if that's what you're asking.

7 Q. I'm not sure if I am, but that's a  
8 good enough question to answer.

9 So who are the owners of SFA?

10 A. As of today?

11 Q. Yes, as of today.

12 A. The owners are myself, Melissa  
13 Stevens, Meta Stevens, Cindy Conti, Robert  
14 Conti, Edith Marcus, David Marcus, Rebecca  
15 Marcus, the estate of Larry Shaw.

16 Q. Do you know who the original  
17 owners of SFA were?

18 A. I'm not sure what you mean by  
19 original.

20 Q. Who were the owners in 2002?

21 A. As of what date?

22 Q. The date of formation.

23 A. I would have to check my company  
24 records, however, I believe it was Larry  
25 Shaw, Edith Marcus, and Meta Stevens.

1 Stevens

2 Do the images that are submitted  
3 for exhibition all contain copyright  
4 notices?

5 MR. SERBAGI: Objection. Form.

6 A. Can you repeat the question,  
7 please?

8 Q. Do the images that you submit for  
9 exhibition contain copyright notices?

10 MR. SERBAGI: Objection. I want  
11 to make a statement for the record.

12 I have allowed you to go for  
13 about an hour now with questions that  
14 have nothing whatsoever to do with the  
15 pending issues in the case. We have a  
16 motion for a protective order before  
17 Judge Fox. The subject of that  
18 protective order is that the  
19 deposition testimony be limited to the  
20 pending claims that we have -- claim  
21 that we have against you, namely, that  
22 Marilyn Monroe was domiciled in New  
23 York and your claim that the Rizzoli  
24 is in the public domain.

25 Since you identified the

1 Stevens

2 Ballantine work, I allowed testimony  
3 as to that. I think I'm going to note  
4 for the record to the extent that  
5 anything in this deposition testimony  
6 is related to issues outside those  
7 works, that we object to that, and I  
8 ask you to limit your questioning to  
9 the pending issues in the case.

10 MR. SLOTNICK: Number one, we  
11 disagree significantly with your  
12 characterization of what our claim is  
13 and what our 30(b)(6) is. I don't  
14 think there is any real need to have  
15 significant questioning as to whether  
16 the Rizzoli works are in the public  
17 domain, because a court of competent  
18 jurisdiction already ruled they are in  
19 the public domain.

20 I am asking this witness about  
21 the nature of her business. Frankly,  
22 I suspect that the background is far  
23 more significant than the specifics of  
24 any photograph, whether it is limited  
25 to Rizzoli or the other book or not,

1 Stevens

2 and I'm going to continue to ask  
3 questions regarding the background of  
4 this business so I understand the  
5 business better so we can deal with  
6 the specifics.

7 Your request for a protective  
8 order is still merely a request. Your  
9 objection is noted. You can note it  
10 as you feel appropriate. But I'm  
11 going to ask the questions and you can  
12 object to them, and we'll let the  
13 judge and the magistrate address the  
14 issue.

15 Is there a question pending?

16 (Record read)

17 MR. SERBAGI: Objection. You can  
18 answer as to the Rizzoli and  
19 Ballantine works.

20 A. Could you specify what you mean by  
21 contain?

22 Q. First of all, do you know what a  
23 copyright notice is?

24 A. I'm not a copyright expert, but I  
25 am aware of the term.

1 Stevens

2 your question -- let me respond this way.

3 We do our best to protect our copyrights  
4 to all the images in our collection. But  
5 in response to your question, I find it a  
6 little unclear. Do images that we, that  
7 SFA uses --

8 Q. Licenses, exploits through third  
9 parties?

10 MR. SERBAGI: Objection.

11 A. Do they contain copyright notices?

12 Q. Yes.

13 MR. SERBAGI: Objection.

14 You can answer as to Rizzoli and  
15 Ballantine.

16 A. I would really -- in regards to  
17 Rizzoli and Ballantine, you would really  
18 have to supply me with a specific example  
19 with an image from those books.

20 Q. Okay.

21 First of all, I assume that you  
22 are going to abide by your counsel's  
23 direction to limit your answer to Rizzoli  
24 and Ballantine?

25 MR. SERBAGI: Objection.

1 Stevens

2 MR. SLOTNICK: I want to know  
3 what the scope of her answer is going  
4 to be. She could ignore your advice.

5 MR. SERBAGI: Ask her questions  
6 and she'll answer them.

7 MR. SLOTNICK: I just asked her a  
8 question.

9 A. My attorney has advised me, and  
10 I'm going to take the advice of my  
11 attorney.

12 Q. Okay.

13 You stated before that you do your  
14 best to protect your rights and your  
15 images.

16 How do you do that; how does SFA  
17 do that?

18 MR. SERBAGI: Objection to form.

19 A. Well, for example, we maintain  
20 records that relate to issues of  
21 copyright.

22 Q. Such as?

23 A. I have reviewed documents related  
24 to copyright registrations.

25 Q. Such as?



1 Stevens

2 A. I have seen registrations for the  
3 Ballantine and Rizzoli books.

4 Q. Have you seen registrations for  
5 any individual picture contained in the  
6 Ballantine or Rizzoli books?

7 (Record read)

8 A. Have I seen -- can you repeat the  
9 question again, please?

10 (Record read)

11 MR. SERBAGI: Objection to form.

12 A. I will repeat that I have seen  
13 registrations for the Ballantine book, the  
14 images in the Ballantine book. Really I  
15 would have to look at the -- in order to  
16 really answer that question, I would have  
17 to look at the specific registrations that  
18 refer to the Ballantine book and the  
19 Rizzoli book. But I have seen documents  
20 that relate to copyright registrations of  
21 those books.

22 Q. And the question I'm asking is if  
23 you have seen registrations of the  
24 photographs in the books as individual  
25 photographs.

1 Stevens

2 MR. SERBAGI: Objection to the  
3 form.

4 A. I do not know what the court  
5 ruled, but I'll happy to look at that  
6 piece of paper if you have it.

7 Q. Are you aware that certain  
8 photographs of your grandfather's were  
9 placed in the public domain?

10 A. That's a legal conclusion I cannot  
11 make.

12 Q. I'm not asking you to make a legal  
13 conclusion. I'm not even asking you to  
14 agree with my legal conclusion.

15 I'm just asking you to -- I'm  
16 asking you a question of fact. Are you  
17 aware that the court ruled that certain of  
18 your grandfather's photographs embodied in  
19 the Rizzoli book are in the public domain?

20 MR. SERBAGI: Objection to the  
21 form.

22 A. I'm aware that there was a  
23 court -- you're calling it ruling. I'm  
24 not an attorney, so I'm going to stay away  
25 from using legal jargon that I don't know

1 Stevens

2 the exact meaning of, but I am aware of  
3 that situation to which you refer.

4 Q. So you're aware there was a  
5 lawsuit?

6 A. Yes, I am.

7 Q. And you're aware that the lawsuit  
8 ultimately ended?

9 MR. SERBAGI: Objection.

10 A. I am aware that there was a  
11 settlement.

12 Q. Settlement. What was the  
13 settlement?

14 A. I believe money exchanged hands,  
15 but, once again, I would have to verify  
16 that.

17 Q. Is there a document that would  
18 identify that settlement?

19 A. There might be.

20 Q. I'm going to ask you to produce  
21 that document.

22 MR. SERBAGI: If we have it, we  
23 certainly will.

24 It's my understanding we gave  
25 that to you already.

1 Stevens

2 answer your question because you have  
3 asked me, you specifically said the entire  
4 series. So it's hard for me to answer  
5 that question.

6 Q. Let's ask it a different way.

7 Did you ask -- this is only  
8 dealing with what you requested -- did you  
9 request seeing any of the photographs in  
10 the flying skirt series other than the  
11 ones in the Rizzoli book?

12 MR. SERBAGI: Objection to form.

13 A. Well, I cannot recall specifically  
14 requesting, as you have stated in your  
15 question, however, in preparation for  
16 today, I did review company files and  
17 amongst the files I also reviewed are our  
18 archive and our collection of images.

19 I believe I have been directed to  
20 answer in regards to the Ballantine and  
21 Rizzoli book, so I'm answering in regards  
22 to this Rizzoli book right here in front  
23 of me. I have prepared for today by  
24 looking at these photographs. Perhaps  
25 there are other ones that relate. I'm

1 Stevens

2 reproduce any part of the series?

3 MR. SERBAGI: Hold on.

4 (Discussion held off the record)

5 MR. SERBAGI: You can answer as  
6 to Ballantine and Rizzoli.

7 I'm directing this witness not to  
8 testify about anything in her  
9 complaint which is the Ballantine,  
10 Rizzoli only.

11 MR. SLOTNICK: You're directing  
12 the witness to answer only with  
13 respect to Ballantine and Rizzoli?

14 A. Could you please repeat the  
15 question?

16 (Record read)

17 MR. SLOTNICK: So you're  
18 directing her not to answer that  
19 question?

20 MR. SERBAGI: No, you heard what  
21 I said. It's on the record. As to  
22 Ballantine and Rizzoli.

23 Q. I'm asking about it being  
24 reproduced by the Associated Press, which  
25 would seem to be something different, but

1 Stevens

2 go ahead.

3 A. At the advice of my attorney, I  
4 will respond that with respect to the  
5 images in the Ballantine and Rizzoli book,  
6 I would have to see those images. I don't  
7 know anything about what arrangement may  
8 or may not have existed between Sam Shaw  
9 and the Associated Press. I was not alive  
10 during the time.

11 It is my understanding that I'm  
12 here today as a representative of Shaw  
13 Family Archives that has existed from 2002  
14 until the present day. And I am, of  
15 course, a member of my family, and I'm  
16 aware of certain circumstances that  
17 happened prior to SFA's existence.  
18 However, I do not know anything about an  
19 alleged relationship between Sam Shaw and  
20 the Associated Press.

21 Q. Is there any member of SFA that  
22 was alive in 1954?

23 A. Yes.

24 Q. Who might that be?

25 A. Meta Stevens, Edith Shaw Marcus,

1 Stevens

2 MR. SERBAGI: Hold on. Don't  
3 answer that question yet.

4 I direct you not to answer.

5 MR. SLOTNICK: I have a series of  
6 questions regarding Sam Shaw's  
7 participation in shooting the flying  
8 skirt series of photographs relating  
9 to 1954. They have nothing to do with  
10 the Ballantine book or the Rizzoli  
11 book. I can ask a series of  
12 questions, or are you going to direct  
13 her not to answer that and then we can  
14 move on?

15 MR. SERBAGI: One second.

16 If they have nothing to do with  
17 Rizzoli and Ballantine book, you  
18 should move on to another topic.

19 MR. SLOTNICK: So you're  
20 directing her not to answer?

21 MR. SERBAGI: Yes. Based on your  
22 representation that they have nothing  
23 to do with the Rizzoli and Ballantine  
24 book.

25 MR. SLOTNICK: They have to do

1 Stevens

2 with the creation of the flying skirt  
3 series, which to my knowledge took  
4 place before the Ballantine or Rizzoli  
5 books. I'm trying to determine things  
6 that happened in the creation of those  
7 photographs, that's my line of  
8 questioning. If you want to direct  
9 her not to answer those --

10 MR. SERBAGI: Based on your  
11 representation a minute ago that they  
12 have nothing to do with the Rizzoli  
13 and Ballantine books, I'm directing  
14 the witness not to answer.

15 MR. SLOTNICK: They have  
16 something to do in that they were  
17 created and they are in the books.

18 MR. SERBAGI: To the extent that  
19 they are in the books, you can ask  
20 those questions. That's not what you  
21 said earlier.

22 Q. I'm going to direct your attention  
23 to paragraph 14 of the complaint.

24 A. Okay.

25 Q. Okay.



1 Stevens

2 series, yes.

3 Q. And I believe you testified that  
4 certain of those photographs have been  
5 published?

6 MR. SERBAGI: Objection.

7 A. I have seen photographs of Marilyn  
8 Monroe with her skirt flying in the air  
9 and they are in the Rizzoli book right  
10 here.

11 Q. Have you seen them in any other  
12 book?

13 MR. SERBAGI: Objection. That's  
14 not the subject of this deposition.

15 I direct you not to answer.

16 Q. So you will not answer any  
17 question regarding publication these  
18 photograph in any other book or  
19 publication; is that correct?

20 A. My attorney has advised me to  
21 answer with respect to Rizzoli and  
22 Ballantine only.

23 Q. Do you know whether your  
24 grandfather left any files, notes,  
25 regarding his work on the 7 Year Itch?

1 Stevens

2 MR. SERBAGI: Objection.

3 A. Could you please be more specific?

4 Q. Within the SFA files, other than  
5 photographic material, is there anything  
6 in the files relating to the 7 Year Itch?

7 MR. SERBAGI: As pertaining to  
8 Rizzoli and Ballantine, you may  
9 answer.

10 A. It's hard for me to say whether or  
11 not the documents I have seen in SFA's  
12 files are necessarily -- have necessarily  
13 been left by Sam Shaw as you asked. For  
14 preparation today, I have seen documents  
15 that relate to photographs in the Rizzoli  
16 and Ballantine book. Some of those  
17 photographs are from the 7 Year Itch.

18 Q. Are you familiar with your  
19 grandfather's handwriting?

20 A. Yes, I am.

21 Q. Are there documents within the SFA  
22 files in his handwriting written  
23 contemporaneous with the filming of the 7  
24 Year Itch in 1954?

25 MR. SERBAGI: Objection to form.

1 Stevens

2

3 Q. I'm going to ask you to look at  
4 paragraphs 21 and 22 of the complaint.

5 A. Okay.

6 Q. Are you familiar with the book,  
7 Marilyn?

8 MR. SERBAGI: Objection.

9 I direct you not to answer unless  
10 it pertains to Rizzoli and Ballantine.

11 MR. SLOTNICK: So any questions  
12 regarding the book of Marilyn, you're  
13 directing her not to answer?

14 MR. SERBAGI: Yes.

15 Would you like to take a break?

16 MR. SLOTNICK: We can take a  
17 break now.

18 (Thereupon, a recess was taken,  
19 and then the proceedings continued as  
20 follows:)

21 (Defendants' Exhibit 7,  
22 Authorization to File Copyright, marked  
23 for identification, as of this date.)

24 BY MR. SLOTNICK:

25 Q. The reporter just handed you

1 Stevens

2 Q. Are you familiar with apparently a  
3 lawsuit called Dalman/Shaw versus  
4 Hallmark?

5 A. I'm not.

6 Q. So you're not familiar with what  
7 copyright was involved in this litigation?

8 MR. SERBAGI: Objection.

9 I direct you not to answer unless  
10 it pertains to Rizzoli and Ballantine.

11 MR. SLOTNICK: How would we know?

12 MR. SERBAGI: That's why I said  
13 unless. Those are the magic words.

14 A. If you would like to show me some  
15 images that relate to this, I'm happy to  
16 try to answer more thoroughly.

17 Q. Let's do it a different way.

18 When you saw this document, did  
19 you ask anyone who it referred to?

20 A. It is my understanding that this  
21 document is one page and is part of a  
22 larger document. I really cannot recall  
23 right now the larger document it refers  
24 to. If you could refresh my recollection.

25 Q. Since these documents came from

1 Stevens

2 BY MR. SLOTNICK:

3 Q. I'm going to ask you to take a  
4 look at what's been marked as Defendants'  
5 Exhibit 12, which is the photocopy of the  
6 book entitled, Marilyn Among Friends, Sam  
7 Shaw and Norman Rosten, R-O-S-T-E-N.

8 Have you seen this book in an  
9 actual book form before?

10 A. The book Marilyn Among Friends?

11 Q. Yes.

12 A. Yes, I have.

13 Q. Where have you seen it?

14 MR. SERBAGI: I'm going to direct  
15 you not to answer regarding this book  
16 unless it pertains to Rizzoli and  
17 Ballantine.

18 MR. SLOTNICK: So you're  
19 directing the witness not to answer  
20 that question?

21 MR. SERBAGI: Unless it pertains  
22 to Rizzoli and Ballantine.

23 MR. SLOTNICK: I'm trying to  
24 determine if she has seen the book.

25 A. I have seen the book.

1 Stevens

2 pages 01059060, 061, 062 are not from  
3 Marilyn Among Friends; is that your  
4 understanding?

5 A. Which ones did you say?

6 Q. The ones that are -- match up to  
7 the Rizzoli book?

8 A. These are not pages from the book,  
9 Marilyn Among Friends.

10 MR. SLOTNICK: And you're  
11 otherwise directing the witness not to  
12 answer any questions regarding Marilyn  
13 Among Friends?

14 MR. SERBAGI: Correct. Unless it  
15 somehow relates to Rizzoli and  
16 Ballantine.

17 Q. Since SFA produced this book and  
18 since SFA has stated in what was its  
19 second amended complaint that it includes  
20 the flying skirt photograph most  
21 prominently displayed, I guess I'm going  
22 to have to ask the witness, are these  
23 photographs in Marilyn Among Friends, and  
24 if not, which ones are?

25 MR. SERBAGI: Objection.

1 Stevens

2 A. Yes.

3 Q. When?

4 MR. SERBAGI: I direct you not to  
5 answer the questions regarding this  
6 document unless it pertains to the  
7 Rizzoli and Ballantine books.

8 MR. SLOTNICK: Let's move on.

9 MR. SERBAGI: Get to the ones  
10 that do. We're going to have a  
11 standing objection.

12 MR. SLOTNICK: We've gotten to  
13 Rizzoli and we've gotten to  
14 Ballantine. So let's just move it  
15 along.

16 Why don't we take a five minute  
17 break.

18 (Thereupon, a recess was taken,  
19 and then the proceedings continued as  
20 follows:)

21 BY MR. SLOTNICK:

22 Q. Couple more questions and then we  
23 can finish up.

24 We talked briefly, maybe not so  
25 briefly, about these binders that have the

1 Stevens

2 MR. SLOTNICK: You can have a  
3 copy of these. Do you want the  
4 originals to be bound in with the  
5 transcript?

6 Why don't you do that?

7 (Time noted: 3:41 p.m.)

8

9 

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MELISSA STEVENS

10

11 Subscribed and sworn to before me  
12 this \_\_\_\_ day of \_\_\_\_\_, 2007.

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1

2 ----- I N D E X -----

3 WITNESS EXAMINATION BY PAGE

4 STEVENS MR. SLOTNICK 4

5

6 ----- INFORMATION REQUESTS -----

7 REQUESTS:

8 INSERT 120

9 Poster of the photograph of the  
10 profile flying skirt 126

11 INSERT 126

12 Document 130

13 Copies of the actual deposit copy135

14 Registrations that SFA has with  
15 respect to Marilyn Monroe As The  
16 Girl, or any of the specific  
17 individual photographs within  
18 Marilyn Monroe 141

19 Marilyn Among Friends 148

20 Binders 152

21 Copies of books marked 153

22 Copies of exhibits 153

23 ----- EXHIBITS -----

24 DEFENDANTS' EXHIBITS FOR ID.

25 1 Notice of Deposition 9

2 Book entitled, Marilyn Monroe,  
The Life, The Myth 48

1

2 ----- EXHIBITS -----

3 DEFENDANTS' EXHIBITS FOR ID.

4 3 Complaint 54

5 4 Decision dated March 19, 1999 61

6 5 Rule 56.1 Statement 64

7 6 Complaint 100

8 7 Authorization to File Copyright 127

9 8 Certificate of Registration 132

10 9 Application for Registration 135

11 10 Marilyn Monroe As The Girl 136

12 11 Letter 141

13 12 Photocopy of Book, Marilyn Among  
Friends 142

14 13 Document 148

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## C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, Adrienne M. Mignano, a Notary  
Public within and for the State of New  
York, do hereby certify:

That MELISSA STEVENS, the witness  
whose deposition is hereinbefore set  
forth, was duly sworn by me and that  
such deposition is a true record of the  
testimony given by the witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I  
am in no way interested in the outcome  
of this matter.

IN WITNESS WHEREOF, I have  
hereunto set my hand this 17th day of  
December, 2007.

  
ADRIENNE M. MIGNANO

## EXHIBIT 15

EXCERPTS FROM THE  
DECEMBER 27, 2007  
DEPOSITION OF  
MELISSA STEVENS HAVE BEEN  
DESIGNATED CONFIDENTIAL  
AND WILL BE FILED UNDER  
SEAL PURSUANT TO THE  
PROTECTIVE ORDER IN THIS  
ACTION